



Entered on Docket  
February 19, 2010

Hon. Linda B. Riegle  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

THE RHODES COMPANIES, LLC, aka  
"Rhodes Homes," et al.,<sup>1</sup>  
Debtors.

Case No.: BK-S-09-14814-LBR  
(Jointly Administered)

Chapter 11

Affects:



All Debtors



Affects the following Debtor(s)

Rhodes Design and Development Corporation

Hearing Date: February 18, 2010

Hearing Time: 1:30 p.m.

Courtroom 1

**ORDER GRANTING MOTION OF DEBTOR FOR ORDER APPROVING**  
**STIPULATION TO LIFT THE AUTOMATIC STAY RE CLAIMS OF REMAINING**  
**KITEC HOMEOWNERS [Docket No. 940]**

<sup>1</sup> The Debtors in these cases, along with their case numbers are: Heritage Land Company, LLC (Case No. 09-14778); The Rhodes Companies, LLC (Case No. 09-14814); Tribes Holdings, LLC (Case No. 09-14817); Apache Framing, LLC (Case No. 09-14818); Geronimo Plumbing LLC (Case No. 09-14820); Gung-Ho Concrete LLC (Case No. 09-14822); Bravo, Inc. (Case No. 09-14825); Elkhorn Partners, A Nevada Limited Partnership (Case No. 09-14828); Six Feathers Holdings, LLC (Case No. 09-14833); Elkhorn Investments, Inc. (Case No. 09-14837); Jarupa, LLC (Case No. 09-14839); Rhodes Realty, Inc. (Case No. 09-14841); C & J Holdings, Inc. (Case No. 09-14843); Rhodes Ranch General Partnership (Case No. 09-14844); Rhodes Design and Development Corporation (Case No. 09-14846); Parcel 20, LLC (Case No. 09-14848); Tuscany Acquisitions IV, LLC (Case No. 09-14849); Tuscany Acquisitions III, LLC (Case No. 09-14850); Tuscany Acquisitions II, LLC (Case No. 09-14852); Tuscany Acquisitions, LLC (Case No. 09-14853); Rhodes Ranch Golf and Country Club, LLC (Case No. 09-14854); Overflow, LP (Case No. 09-14856); Wallboard, LP (Case No. 09-14858); Jackknife, LP (Case No. 09-14860); Batcave, LP (Case No. 09-14861); Chalkline, LP (Case No. 09-14862); Glynda, LP (Case No. 09-14865); Tick, LP (Case No. 09-14866); Rhodes Arizona Properties, LLC (Case No. 09-14868); Rhodes Homes Arizona, L.L.C. (Case No. 09-14882); Tuscany Golf Country Club, LLC (Case No. 09-14884); and Pinnacle Grading, LLC (Case No. 09-14887).

1 Upon consideration of the *Motion of Debtor for Order Approving Stipulation to Lift the*  
2 *Automatic Stay Regarding Claims of Remaining Kitec Plaintiffs* [Docket Number 940] (the  
3 “Motion”),<sup>2</sup> and good cause appearing,

4 IT IS HEREBY ORDERED that the Stipulation attached hereto as Exhibit “1” is  
5 approved and the automatic stay is lifted for the limited purpose of permitting the Remaining  
6 Kitec Plaintiffs and RD&D to take all actions necessary to effectuate the Stipulation.

7  
8 PREPARED AND SUBMITTED BY:

9 LARSON & STEPHENS

10 By: /s/ Zachariah Larson, Esq.

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Stipulation.

## Exhibit “1”

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Attorneys for Debtors and  
 Debtors in Possession

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

THE RHODES COMPANIES, LLC, aka  
 "Rhodes Homes," et al.,<sup>3</sup>  
 Debtors.

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**STIPULATION TO LIFT THE AUTOMATIC STAY REGARDING CLAIMS OF  
REMAINING KITEC PLAINTIFFS**

This stipulation and agreed order (the “Stipulation”) is made and entered into by Debtor Rhodes Design and Development Corporation (“RD&D”) and the Remaining Kitec Plaintiffs, as defined below, in the *In re Kitec Fitting Litigation*, Case No. A493302, currently pending in District Court of Nevada, Clark County, (hereinafter collectively referred to as the “Nevada Class Action”), through their respective counsel, and in reference to the following facts:

A. The Nevada Class Action is, inter alia, a construction defect class action filed on behalf of all owners of a residence in Clark County, Nevada, that contains or at any time contained a Kitec or PlumbBetter plumbing system or components (the “Class”). As a result of numerous mediation and settlement discussions held in connection with the Nevada Class Action, on August 26, 2008, the Class and RD&D reached an agreement (the “Prepetition Kitec Settlement”) to fully and finally resolve the claims of twenty-five (25) Class plaintiff homeowners against RD&D in the Nevada Class Action (“Rhodes Subclass A”).

B. On March 31, 2009, RD&D filed a chapter 11 petition under the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada. As a result of the pendency of the bankruptcy case, all proceedings against RD&D are automatically stayed.

C. On September 4, 2009, the Debtors filed a motion to lift the automatic stay so that the Prepetition Kitec Settlement with Rhodes Subclass A could be implemented [Docket No. 470], and on October 19, 2009 the Court entered an order approving the motion [Docket No. 597]. As part of the order, the Class’ proof of claim, which proof of claim is designated as number 129 in RD&D’s case (the “Kitec Proof of Claim”), was reduced from \$5,605,000 to \$5,308,125 in order to reflect the withdrawal of the claims of Rhodes Subclass A. Thus, the claims of the remaining Class plaintiffs, i.e. the Class minus Rhodes Subclass A (the “Remaining Kitec Plaintiffs”), total \$5,308,125. The Class also withdrew proof of claim number 60 in the Rhodes Companies, LLC case as a duplicate claim of the Kitec Proof of Claim.

C. RD&D is willing to stipulate to lift the automatic stay pursuant to 11 U.S.C. § 362 for the sole purpose of permitting the Remaining Kitec Plaintiffs to liquidate their claims, on the

1 condition that the Remaining Kitec Plaintiffs are entitled to recover on their claims against  
2 RD&D only from RD&D's insurer, Lexington Insurance (the "Insurer").

3 NOW, THEREFORE, IT IS HEREBY STIPULATED by the undersigned parties,  
4 through their counsel and respective representatives that:

5 (a) The automatic stay shall be modified, subject to Bankruptcy Court approval, to  
6 permit the Remaining Kitec Plaintiffs to liquidate their claims in the Nevada Class Action, as  
7 further provided below.

8 (b) There shall be a full reservation of rights for RD&D and the Insurer with respect  
9 to the relevant insurance policies and to defend the Nevada Class Action on the merits.

10 (c) Any and all portions of the Remaining Kitec Plaintiffs' claims or causes of action,  
11 whether prepetition or postpetition claims or causes of action, that are not fully satisfied by  
12 RD&D's available insurance policies are forever waived and discharged as against RD&D, even  
13 if the Remaining Kitec Plaintiffs are unable to obtain any recovery from any insurance policies.

14 (d) Any recovery by the Remaining Kitec Plaintiffs received from the insurance  
15 proceeds shall be reduced by the amount of the applicable insurance policy's deductible.

16 (e) Upon entry of the Order approving this Stipulation, the Kitec Proof of Claim shall  
17 be deemed withdrawn. The claims agent shall be directed to amend the claims register to reflect  
18 that the amount of proof of claim number 129 is reduced from \$5,308,125 to zero.

19 (f) The Remaining Kitec Plaintiffs agree not to oppose or object to confirmation of  
20 the plan of reorganization currently proposed by the First Lien Steering Committee, as may be  
21 amended or modified and to file a notice to that effect on or prior to January 19, 2010.

22 (g) The Bankruptcy Court retains jurisdiction to resolve any dispute arising from the  
23 interpretation or enforcement of this Stipulation.

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1 DATED this 19<sup>th</sup> day of January, 2010.

2 By: /s/ Carol L. Harris  
3 KEMP, JONES & COULTHARD, LLP  
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5 William L. Coulthard, Esq. (#3927)  
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11 *Counsel for In re Kitec Fitting Litigation*  
12 *Class Plaintiffs*

DATED this 19<sup>th</sup> day of January, 2010.

By: /s/ Zachariah Larson  
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**LR 9021 Certification**

In accordance with LR 9021, counsel submitting this document certifies as follows  
(check one):

☐ The court has waived the requirement of approval under LR 9021.

☐ This is a chapter 7 or 13 case, and either with the motion, or at the hearing, I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☐ This is a chapter 9, 11, or 15 case, and I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☒ I certify that I have served a copy of this order with the motion, and no parties appeared (other than the parties to this Stipulation) or filed written objections.

Submitted by:

DATED this 18<sup>th</sup> day of February, 2010.

By: /s/ Zachariah Larson

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